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## The Third Gender Right: Struggle for Equality

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### Abstract

The concept of gender has long been confined to a binary framework, which largely ignores the existence of individuals who place their identities outside of traditional male and female categories. The term "third gender" encompasses a diverse group of people whose gender identity does not conform to traditional notions of male or female. This abstract explores the struggle and progress in recognizing and protecting the rights of third-gender persons. Historically marginalized and stigmatized, persons of the third gender have faced widespread discrimination, social exclusion, and limited access to essential services such as health care, education, and employment. Denial of recognition and legal identity documentation has further exacerbated their insecurity, hindered their participation in society, and hindered progress toward true equality. Ultimately, recognizing third-gender rights is necessary to build a more inclusive society. Embracing diverse gender identities and promoting equitable treatment can create a world where all individuals are respected, empowered, and celebrated for their uniqueness. As we continue this journey towards inclusivity, learning from past experiences and fostering solidarity in communities is critical to creating a more compassionate and accepting world for all.

**Keywords** – Gender, Rights, discrimination, marginalized, recognition.

### Introduction

In pursuit of a just and equitable society, the struggle for equality has been a mainstay of human rights movements around the world. While much progress has been made in recent decades to address discrimination and secure the rights of marginalized groups, the plight of third genders, often referred to as transgender or gender non-conforming individuals, continues to challenge those challenges. The concept of a third gender is not new and can be traced back to ancient civilizations where societies recognized the existence of individuals whose gender identity did not conform to traditional binary norms. In modern times, the term "third gender" has been recognized as a broader term that encompasses diverse gender identities that go beyond male and female. It sheds light on the conflicts that continued. From facing prejudice and social stigma to overcoming legal barriers and discriminatory practices, people of the third gender have embarked on a journey full of obstacles and resilience. Historically, many societies have relegated members of the third sex to marginalized roles. After their removal, they did not gain social acceptance and were often harassed. They have been excluded and denied education, employment, health care, and other basic services, leading to a cycle of poverty and discrimination. In recent years, however, the Third Women's Rights Movement has gathered momentum, as courageous activists, allies, and organizations tirelessly champion change. They sought legal recognition of their gender identity, sought equal rights and protections under the law, and fought discrimination in various areas of life. While some countries have taken incremental steps to address discrimination, others struggle with entrenched prejudices and institutionalized bias. Cultural, religious, and social norms often conflict with principles of equality and human rights, which poses complex challenges to the movement. Moreover, the struggle for third-gender rights is not limited to legal recognition alone. This extends to addressing interrelated issues such as mental health, economic empowerment, and access to safe spaces.

The fight for equality includes combating violence, hate crimes, and discriminatory attitudes that threaten the well-being and dignity of people of the third gender. And in this constant pursuit of justice, collaboration between governments, civil society, and international organizations becomes vital. Cooperation between governments, civil society, and international organizations has become vital. It happened. Legislative reforms, affirmative action policies, and awareness campaigns can help foster an inclusive environment in which the third person can thrive without fear of discrimination or marginalization.

**History of transgender people in India-** The history of transgender people in India is very ancient and they are present with their existence in various sectors of the society. Hijra, Kinnar, Arwani, Jogpasha, Jogin, Jogpiya, Khwaja Sira, etc. are some of the terms that are used in Indian culture to refer to people from the transgender community. The history of the transgender community has varied on religious, cultural, and cultural grounds. Hijras and other transgender people have had a special place in Indian culture since ancient times and were also involved in religious and social events. In some Vedas, Puranas, and historical references, transgender people are mentioned. The Mahabharata also describes the character of some of the characters from the transgender community. The transgender community in India got a place in society during the time of Mughal Emperor Akbar. He was allowed to live in his court under a special Iqtishar Gumbad. Kinnari Devi Temple is an ancient temple for the transgender community in Kozhikode, Kerala, India, which was constructed exclusively by people from the Kinnar community. However, with the changing times, in the last few decades, the transgender community has also faced many challenges to get respect and a proper place in Indian society. Some judicial decisions and government policies in India have also helped him gain support and respect. The Hijra community has had its own distinct identity in India for a long time. This community deals with transgender individuals who belong to different gender groups. They lead a life with their own distinct social, cultural, and religious traditions. Some of these find mention in mythology, in which they are found in various roles with gods and goddesses. However, there are various references regarding him being respected in society or considering him as a saint of nature, so it is generally accepted. In Indian society, the transgender community has different identities and positions, and their relationship with religious traditions varies. The Mahabharata contains stories relating to characters such as Shikandi and Arjuna as examples of transgender characters. Through these stories, the people of the transgender community try to establish their foothold in Indian society.

**Legality of transgender marriage-** In countries with progressive laws and policies, transgender people are generally allowed to marry according to their gender identity, regardless of their sex assigned at birth. This means that if a person identifies themselves as male or female (regardless of their biological sex), they may be married to a person of the opposite sex, or a person of the same sex in a permitting jurisdiction. On the other hand, some countries may have more restrictive laws that do not recognize a person's gender identity, and they may only allow marriage based on the sex assigned at birth. In such cases, transgender individuals may face legal challenges or discrimination when attempting to marry according to their gender identity. In the United States, transgender people can legally marry any partner in all 50 states. They may also receive full federal immigration benefits. It is based on a 2015 Supreme Court ruling that legalized marriage for same-sex couples. In India, transgender people are recognized as a third gender and have the right to self-identify their gender. However, there is no specific law that allows or prohibits transgender marriages in India. The 2019 Transgender Persons (Protection of Rights)

Bill does not include any provision related to the marriage of transgenders. The legal status of transgender marriage in India depends on the interpretation of existing laws, such as the Hindu Marriage Act, of 1955, which defines the bride as a woman. In Saudi Arabia, transgender people are not recognized by law and face severe punishment for expressing their gender identity. Transgender people are not allowed to marry anyone in Saudi Arabia, as same-sex marriage is illegal and punishable by death. In South Africa, transgender people can legally change their gender on their identity documents and marry anyone of their choice. South Africa was the first country in Africa to legalize same-sex marriage in 2006. These are just a few examples of the diversity and complexity of laws relating to transgender marriage around the world.

**A legal vision for third gender rights-** The legal approach to third-gender rights involve recognizing and affirming the rights of individuals who identify outside the traditional binary gender of male and female. This requires the implementation of legal frameworks that acknowledge the existence and diverse identities of non-binary, genderqueer, and gender non-conforming individuals. Here are some key aspects of the legal approach to third-gender rights:

**Education and Awareness:** Promoting education and awareness of third-gender identity to promote understanding, acceptance, and inclusion in schools, workplaces, and society at large.

**Legal protections for intersex persons:** Recognize the rights of intersex persons and protect them from non-consensual medical intervention and other harmful practices.

**Legal recognition:** The first step is to legally recognize third-gender identity and ensure that individuals can obtain official identity documents such as passports, driver's licenses, and birth certificates that accurately reflect their gender identity.

**Anti-Discrimination Laws:** Enforce comprehensive anti-discrimination laws that protect individuals from discrimination based on gender identity or expression in all areas of life, including employment, education, housing, health care, and public services.

**Health care access:** Ensure access to gender-affirming health care, including hormone therapy, gender confirmation surgery, and mental health services, without discrimination or gatekeeping.

**Gender-neutral language:** Encourage the use of gender-neutral language in legal documents and government forms to make non-binary individuals more inclusive.

**Inclusive Prison and Detention Facilities:** Develop policies and guidelines that protect the rights and safety of third-gender persons within the criminal justice system, including access to appropriate facilities and respectful treatment by law enforcement.

**Parental and family rights:** Ensure that persons of the third gender have the same parenting and family rights as other persons, including the right to marry, adopt children, or have biological children through assisted reproductive technology capability is included.

**Global perspective:** to advocate for third-gender rights internationally and support efforts to address the issue globally, considering that different countries may have different legal and cultural contexts.

**Intersectionality:** Recognize that persons of a third gender may face additional discrimination and marginalization due to factors such as race, ethnicity, disability, and socioeconomic status, and incorporate an intersectional approach into legal protections.

**Data collection and research:** Collect comprehensive data on third-gender persons to better understand their needs and experiences, which can inform policymaking and improve targeted supports.

Inclusivity in sports: Create guidelines that allow fair and inclusive participation of persons of the third gender in sports, considering their rights and the principles of fair competition.

Engaging and consulting with third-gender communities in formulating these legal approaches is important, as they are the ones most affected and knowledgeable about their needs and experiences. A legal framework that embraces diversity and ensures equal rights for all gender identities contributes to a more inclusive and just society.

**NALSA: A Little Hope-** NALSA stands for National Legal Services Authority. It is an organization in India responsible for providing legal aid and promoting justice to the marginalized and underprivileged sections of society. NALSA is committed to ensuring equal access to justice and legal representation for all citizens, especially those who are unable to afford legal aid. NALSA's efforts to uphold the rights of transgender and gender-diverse persons There are many important judgments and verdicts given by the Supreme Court of India. One such landmark judgment was in 2014. In the case of the National Legal Services Authority (NALSA) v. Union of India and others, the Supreme Court of India recognized transgender people as a "third gender" and upheld their rights and entitlements under the Constitution.. The court's judgment was a significant step towards acknowledging the rights and dignity of transgender persons, recognizing their right to self-identify as a male, female, or third gender, and providing them legal recognition and protection. It said that transgender persons have the right to be treated with equality and should not face discrimination based on gender identity. The court directed the government to take affirmative action to ensure equal opportunities for transgender people in education, employment, and social welfare schemes. The judgment also upheld their right to access healthcare and other public services without prejudice.

**Critical Analysis: Differences in Judgment in the Transgender Case-** National Legal Services Authority vs Union of India (NALSA) case, which was a landmark judgment by the Supreme Court of India in 2014. In this case, the court recognized the rights of transgender persons as a third gender and affirmed their right to self. Recognize their gender identity. The court also directed the government to provide reservation and welfare measures for transgender persons. However, the decision has been criticized for the contradictory trends and inconsistencies in interpreting and implementing the transgender category. There are some differences in the decision: The court used a broad definition of transgender that included transgenders, eunuchs, transsexuals, cross-dressers, and other gender non-conforming individuals, but also used a narrower definition that classified all transgender individuals as eunuchs. The court upheld the right to self-identify one's gender without any medical or psychological intervention but also suggested that a person undergoing gender reassignment surgery (SRS) may be legally classified as male or female. To be recognized as a woman. This means SRS is a prerequisite for changing one's gender to legal gender. The court asked the government to recognize transgender persons as a socially and educationally backward class under Articles 15(4) and 16(4) of the Constitution. Ordered to provide reservation but did not specify criteria or mechanism for identification and verification of transgender persons for the purpose. The court acknowledged the diversity and fluidity of gender identities and expressions but furthered the gender binary by dividing transgender individuals into male-to-female and female-to-male categories while ignoring the possibility of non-binary or multiple genders. The court recognized a transgender person's right to dignity and privacy but violated these rights by using derogatory terms such as 'psychological disorder' and 'opposite gender' to describe them. Reflect a lack of clarity and consistency in individuals' legal understanding and recognition. They

also pose challenges and risks to the actual implementation and implementation of the decision, which may exclude or marginalize certain sections of the transgender community or restrict their choice and autonomy. Therefore, India needs to further engage with various stakeholders including transgender activists, lawyers, academics, policymakers, and civil society groups to address these issues and ensure that the rights and dignity of transgender persons are respected and protected. Negotiation and counselling are required.

**Transgender vs transsexual-** The terms transgender and transsexual are often used to describe people whose gender identity differs from the sex assigned at birth. However, these terms are not the same and some people may prefer one over the other. Here is a summary of the difference between transgender and transsexual: Transgender is a broad term that includes all individuals who do not match the gender assigned at birth. Transgender people may or may not choose to change their appearance, body, name, or legal identification mark to match their gender identity. Transgender does not indicate any specific medical procedure or intervention. Transsexual is a narrower and older term that refers to individuals who wish to physically change to a gender that matches the gender they identify with. Transsexual people usually undergo medical changes, such as hormones or surgery, that help change their anatomy and appearance. Transsexual is not a broad term; many transgender people do not identify with it. The main difference between the two terms is that transgender is more inclusive and affirms a diversity of gender identities and expressions, while transsexual is more focused on the medical aspect of transition. Some people may find the term transsexual offensive or misogynistic, as it implies that one's sex and gender are fixed and binary. Therefore, it is important to ask each person which word they prefer and respect their choice.

**Legal requirements for transgender-** Recognition of transgender identity and the right to change one's legal name and gender marker on official documents, such as birth certificates, passports, ID cards, etc. This may require a medical diagnosis of gender dysphoria and proof of living in the assigned gender. a specified period, a declaration of intent to remain permanently in the acquired sex, or a court order. Some countries allow transgender people to self-identify as their gender without any medical or legal intervention. Protection from discrimination and harassment based on gender identity or expression in various domains such as education, employment, health care, housing, public services, etc. This may include the enactment of anti-discrimination laws and the provision of inclusive policies and practices. Establishment of grievance mechanism and redressal, promotion of awareness and sensitivity training, etc. Some countries have specific laws or policies that address the needs and rights of transgender people in certain areas. Access to health care services that are fair, affordable, and respect the dignity and autonomy of transgender people. This can include the availability of gender-affirming treatments, such as hormone therapy, surgery, counselling, etc., as well as prevention and treatment of other health problems that can affect transgender people, such as HIV/AIDS, mental health, drug abuse., Etcetera. Some countries have guidelines or standards of care that regulate the provision of health care for transgender people.

**Legal Status of Transgender in Asian Countries-** The legal status of transgender persons in Asian countries varies greatly across the region. It is important to note that laws and attitudes towards transgender people have changed since then,



India: In 2014, the Indian Supreme Court recognized the rights of transgender people, allowing them to identify as a third gender on official documents. The landmark decision aims to provide them with greater social and legal recognition and access to various welfare programs. Nepal: Nepal has been considered one of the most progressive countries in terms of transgender rights. Nepal's Supreme Court has recognized a third gender category, and transgender persons can obtain official documents that reflect their gender identity. Pakistan: In 2009, the Supreme Court of Pakistan recognized the rights of hijra (transgender) individuals, including the right to vote and to be recognized as a different gender in official documents. However, transgender individuals still face significant social stigma and discrimination.

Bangladesh: In 2013, the government of Bangladesh officially recognized the Hijra community as a third gender and allowed them to be identified as such in official documents. Thailand: Thailand is known for its relatively tolerant and accepting attitude towards transgender individuals, who are often referred to as "kathoeys" or "ladyboys". The third gender category is recognized and has some legal protection, but challenges remain in some areas. Philippines: The Philippines is making progress in recognizing transgender rights, especially in cities such as Manila, where local ordinances have been passed to protect transgender persons from discrimination.

Singapore: Singapore allows individuals to change their gender on official identity documents but requires gender reassignment surgery and approval from a medical professional.

Malaysia: Malaysia does not legally recognize a third gender category, and transgender individuals face legal and social challenges including discrimination and limited access to basic rights.

Indonesia: Indonesia does not officially recognize a third gender category. Transgender individuals often face legal and social challenges and may face discrimination.

Japan: Japan is slowly taking steps to recognize transgender rights, with some local governments allowing sex change without surgery. However, nationwide recognition is limited.

South Korea: South Korea is also making progress in recognizing transgender rights, with the government allowing gender marker changes without surgery and recognizing a third gender option for some official documents.

It is important to emphasize that the legal landscape can change rapidly, and societal attitudes may differ significantly from what is reflected in the law. Additionally, some countries in Asia have more diverse laws and practices at the regional or local level than at the national level.

**The legal status of transgender in European countries-** The legal status of transgender people in European countries varies greatly, depending on the country's laws and policies regarding legal gender identity, asylum, hate crime/speech, non-discrimination, health, and family. Legal gender identity was the most dynamic area, although lagging the progress seen in previous years: nine countries have self-determination laws: Belgium, Denmark, Iceland, Ireland, Luxembourg, Malta, Norway, Portugal, and Switzerland. These countries allow people to apply for a legal gender change and receive a new gender status on their identity cards with a simple declaration. However, ten countries still require sterilization for a person's gender to be legally recognized. Among them, five are EU member states: the Czech Republic, Finland, Latvia, Romania, and Slovakia.

Transgender identity is not included in any EU funding and was not mentioned in the law establishing the European Institute for Gender Equality (EIGE), as is sexual orientation. Recognition for non-binary people is only possible in two states: Iceland and Malta. Given that the Fundamental Rights Agency found that 62% of Trans respondents to the LGBTI II survey (2019) did not identify exclusively as gender, the absence of non-binary recognition fails most of the Trans community. Two countries have actively removed (Kazakhstan, Kyrgyzstan) or even banned legal gender identity (Hungary). These countries have criminalized their gender identity or expression and face discrimination in employment, housing, health care, and other areas of life.

**Legal Status of Transgender in African Countries-** The legal status of transgender people in African countries varies depending on the country and the legal system. According to a report by Human Rights Watch, only South Africa and Cape Verde have legal protections for transgender people, such as allowing them to change their legal gender and name on official documents. Other countries such as Angola, Botswana, Lesotho, Malawi, and Mozambique have decriminalized homosexual conduct but do not recognize or protect transgender rights. Some countries, such as Kenya, Uganda, and Zambia, have laws that criminalize cross-dressing or impersonating the opposite sex, which can be used to target and harass transgender people. In addition, many African countries have laws that ban same-sex relationships, which may also affect transgender people who identify with a different gender than the one assigned at birth.

Transgender people in Africa face many challenges and risks, such as stigma, discrimination, violence, lack of access to health care, education and employment, and criminal charges. They often must hide their identity or flee their country to seek refuge elsewhere. However, there are also some signs of hope and progress, such as the emergence of transgender activists and organizations, increased visibility, and awareness of transgender issues in the media and society, and support from regional and international human rights bodies. Transgender people in Africa are resilient and courageous and deserve respect and dignity.

**The legal status of transgender in American countries-** In the United States, the rights of transgender people vary greatly by jurisdiction. (“Transgender rights in the United States - Wikipedia”) In recent decades, federal, state, and local laws and rulings have expanded to protect transgender Americans. However, many rights are vulnerable, and some rights are being eroded. Transgender employees are protected from employment discrimination nationally following a 2020 Supreme Court ruling. If the Equality Act is passed, discrimination based on gender identity would be prohibited in various sectors. Most states allow updating of gender identity on birth certificates and driver's licenses, although some require proof of gender reassignment surgery, or do not allow these fields to be updated at all. Some states legally recognize non-binary citizens and offer an "X" marker on identity documents. Transgender people in the United States also have the right to marry regardless of their partner's legal gender.

In Canada, transgender people are protected from discrimination and harassment by the Canadian Human Rights Act and the Canadian Charter of Rights and Freedoms. They can also change their legal gender and name on federal documents without the need for surgery. In 2017, Canada was the first country in the world to pass a law explicitly banning discrimination based on gender identity or expression. In Mexico, transgender people can change their legal gender and name in some states and municipalities without the need for surgery or judicial approval. However, the process is not uniform

across the country and can be costly and time-consuming. Transgender people in Mexico also face high violence, stigma, and social exclusion levels.

In Brazil, transgender people have been able to change their legal gender and name since 2018 without the need for surgery or judicial approval. They can also get free gender-affirming health care through the public health system. However, Brazil also has one of the highest rates of violence against transgender people in the world.

In Argentina, transgender people have one of the most progressive legal frameworks in the world. They can change their legal gender and name based on self-identification without the need for surgery or judicial approval since 2012. They can also access free gender-affirming health care through the public health system. Argentina was the first country in the world to adopt a law that allows transgender people to define their identity without medical intervention.

Other US countries have varying levels of recognition and protection for transgender people. Some countries, such as Bolivia, Chile, Colombia, Costa Rica, Ecuador, Panama, Peru, and Uruguay, have laws that allow transgender people to change their legal gender and name, with different requirements and procedures. Other countries, such as Cuba, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, and Venezuela, have no laws that allow transgender people to change their legal gender and name or protect them from discrimination and violence.

**Conclusion-** The struggle for equality and recognition of third-gender rights is an important and ongoing battle in many societies around the world. Third gender, often referring to individuals who do not identify solely as male or female, includes individuals of various gender identities such as transgender, non-binary, and genderqueer. Their fight for equal rights covered many areas including legal recognition, healthcare access, employment opportunities, education, and social acceptance. Progress has been made on third-gender rights in some areas over the years. Many countries have taken steps to legally recognize and protect the rights of transgender and non-binary individuals, such as allowing gender marker changes on identity documents, legal protections against discrimination, and equal access to health services. However, despite these advances, challenges remain. Discrimination and prejudice against the third gender are rampant in various parts of the world. They often face social stigma, limited access to health care, high rates of violence, and barriers to education and employment opportunities. Additionally, legal recognition of their gender identity may not be widespread, leading to challenges with official documentation, which may affect their ability to access essential services and participate fully in society. To achieve true equality for the third gender, society must work towards greater understanding, acceptance, and inclusion. This includes comprehensive anti-discrimination laws and policies, stronger education on gender diversity, and efforts to challenge harmful stereotypes and prejudices. By fostering a more inclusive and compassionate society, we can strive towards a future where the rights of third genders are fully recognized, respected, and protected. It is important for governments, institutions, and individuals to actively support the third-gender community and uphold their rights as a fundamental aspect of human rights and social justice. Only through collective efforts can we overcome the struggles faced by the third gender and create a more just and harmonious world for all.



**References-**

1. Spring, J. (2016). *Deculturalization and the struggle for equality: A brief history of the education of dominated cultures in the United States*. Routledge.
2. Celis, K., & Lovenduski, J. (2018). Power struggles: gender equality in political representation. *European Journal of Politics and Gender*, 1(1-2), 149-166.
3. Trivedi, S. (2021). Third Gender: Struggle of Transgender People for Legal Recognition in India. *Indian JL & Legal Rsch.*, 2, 1.
4. Lorber, J. (2001). *Gender inequality*. Los Angeles, CA: Roxbury.
5. Patel, P. (2016). Multi-faithism and the Gender Question: Implications of Government Policy on the Struggle for Equality and Rights for Minority Women in the UK. In *Moving in the Shadows* (pp. 41-58). Routledge.
6. Marigold, V., & Dhanaraj, A. (2022). The Struggle of the Third gender and Children in Mahesh Dattani's *Seven Steps around the Fire and Tara*. *Journal of Positive School Psychology*, 6(3), 2464-2475.
7. Herdt, G. (Ed.). (2020). *Third sex, third gender: Beyond sexual dimorphism in culture and history*. Princeton University Press.
8. Jain, S., & Anand, A. (2021). Adoption Struggle of Transgenders: Need of Equity Norms. Issue 5 *Int'l JL Mgmt. & Human.*, 4, 35.
9. Trumbach, R. (1998). *Sex and the Gender Revolution, Volume 1: Heterosexuality and the Third Gender in Enlightenment London* (Vol. 1). University of Chicago Press.
10. Lugones, M. (2013). The coloniality of gender. In *Globalization and the decolonial option* (pp. 369-390). Routledge.
11. Feldman, J., & Bockting, W. (2003). Transgender health. *Minnesota Medicine*, 86(7), 25-32.
12. Green, E. L., Benner, K., & Pear, R. (2018). transgender. Could Be Defined Out of Existence Under Trump Administration, *The New York Times*.
13. Grant, J. M., Mottet, L. A., Tanis, J. J., & Min, D. (2011). *Transgender discrimination survey*. National Center for Transgender Equality and National Gay and Lesbian Task Force: Washington, DC, USA.
14. Enke, F. (Ed.). (2012). *Transfeminist perspectives in and beyond transgender and gender studies*. Temple University Press.
15. Transgender rights in the United States - Wikipedia, [https://en.wikipedia.org/wiki/Transgender\\_rights\\_in\\_the\\_United\\_States](https://en.wikipedia.org/wiki/Transgender_rights_in_the_United_States).